IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.187 OF 2004

Essar Oil Limited. ... Petitioners.

vs

.

M/s.Mazagon Dock Limited ...Respondents

Mr.Anil Menon, for Petitioners.

Mr.Sudeep Sen i/b. Uduwadia Udeshi, for Respondents.

CORAM: D.K.DESHMUKH,J.

DATED: 28th June,2005

P.C.:-

1. By this petition, the petitioners challenge the Award made by the sole Arbitrator dated 5.1.2004. By that Award substantial claims made by the petitioners have been granted. However, the learned Arbitrator has rejected one claim made by the petitioners for extra work. The challenge is that the findings recorded by the learned Arbitrator that as per the terms of the contract payment for extra work could be claimed only by the other party to the contract namely Das Offshore and not by the petitioners, is contrary to the terms of the

contract. From the reasons assigned by the learned arbitrator in the Award for recording the findings, it is seen that the learned Arbitrator after considering Clause 4 of the contract and Annexture IV to the contract has held that if Annexture IV to the Contract is read with Clause 4 of the contract, it becomes clear that the extra work rate for top side extra work has been provided only in part I and therefore, as admittedly that work was to be done by Das Offshore, the rate for extra work can be claimed by Das offshore. It was contended that because it is a lump sum contract and as the heading of Annexture IV is "Schedule of Unit Rates for extra work/ standby", that rate for extra work is applicable to both the parts of Annexture IV and not only to Part-I. After having heard the learned counsel for both the sides and going through the Award and the terms of contract, I find that considering the heading of Annexture IV it is possible to say that the rate of extra work is applicable to both the parts of Annexture IV, but the conclusion which is reached by the learned arbitrator that as sub-heading of part I reads as "Rates for topside extra work", the rate for the extra work is applicable only to part I" is a possible conclusion to be reached. It is further to be seen here that the learned Arbitrator has come to that conclusion after considering the relevant evidence. Taking overall view of the matter therefore, the Award to the extent challenged in the petition cannot be interfered with by this Court in its limited jurisdiction under Section 34 of the Arbitration and

Conciliation Act. The petition therefore fails and is dismissed. The petitioners are directed to pay cost of this petition to the respondents as incurred by the respondents.